

October 15, 2020

Via ECF

The Honorable Roanne L. Mann
United States Magistrate Judge
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**Re: Joint Status Report: *Suffolk County Water Authority v. The Dow Chemical Co. et al.*,
No. 2:17-cv-6980-NG-RLM, and Related Cases**

Dear Magistrate Judge Mann:

On behalf of all 32 parties in the referenced cases, we write to provide this joint status report in advance of the conference currently scheduled with the Court for October 22, 2020.

The parties continue working cooperatively to advance discovery despite the ongoing challenges and delays caused by COVID-19. Since the parties last updated the Court on July 15, 2020, the following activities have been completed:

1. **Party Document Discovery.** On July 31, 2020, Defendants Shell Oil Company (Shell) and Procter & Gamble Company (P&G) produced documents in response to Plaintiffs' initial discovery demands, and Shell and P&G supplemented their productions on October 2 and October 13, respectively. Over the past three months, seven Plaintiffs have made supplemental document productions in response to the initial Fact Sheets and/or Defendants' initial discovery demands. The parties are reviewing these documents and other voluminous materials previously produced, have met and conferred on numerous occasions to discuss discrete issues, and expect to continue to meet and confer to address open issues. The parties anticipate there will be additional party document productions on a rolling basis. At the present time, the parties do not have any disputes that require the Court's guidance. As set forth below, the parties are negotiating a schedule and deadline to serve all written discovery and complete production in all cases.
2. **Third-Party Discovery.** The parties have made progress on third-party discovery, but production from many third parties remains incomplete. Of the 33 third-party subpoenas and Freedom of Information requests the parties have served, 15 third parties have made initial document productions, and the parties expect that most of those third-parties will produce more documents. The parties expect the remaining third parties who have not produced documents yet will do so, and that some of those productions will be voluminous. As previously reported, the parties are continuing to be flexible with third-party response and production times given COVID-related issues. Other than the potential dispute outlined below, meet-and-confers are ongoing with third parties and there are no issues that require the Court's guidance at this time.

There is one third-party dispute that may require assistance from the Court in the near term. That dispute involves the heightened confidentiality restrictions demanded by the New York Department of Environmental Conservation (DEC) and the New York Department of Health in exchange for the production of certain categories of well data. Despite agreeing in the spring to the contours of a proposed heightened confidentiality agreement and representing it would circulate a draft agreement, DEC has neither done so nor given an estimate of when a draft might be circulated. The agencies are also withholding responsive documents under claims of the deliberative process privilege. As a result, DEC has produced only one document thus far. The parties remain in discussions with the agencies regarding these issues and are hopeful they can reach agreement, but they may seek the Court's assistance if the issues are not promptly resolved.

Finally, as the materials produced to the parties so far reflect that other entities likely have relevant information, the parties expect to subpoena these third parties for documents as they are identified.

3. **Answers.** On July 21, 2020, Defendants The Dow Chemical Company, Ferro Corporation and Legacy Vulcan, LLC answered the Complaints in the cases that were the subject of Defendants' motions to dismiss, which Judge Gershon denied on June 4, 2020.
4. **Motions to Dismiss.** Defendants Shell's and P&G's motions to dismiss Hicksville Water District and New York American Water's complaints were fully briefed in February 2020, and a decision is still pending.
5. **Pretrial Schedule.** The parties continue to meet and confer to narrow issues for pretrial scheduling, including dates for completion of fact and expert discovery.

The parties are conferring on a potential case management order that would include deadlines for a range of pretrial tasks, including discovery, motion practice, initial case(s) selected for trial, and trial management. Those discussions are ongoing. So that the parties may continue a dialogue to narrow any differences, the parties propose that they provide the Court with a further joint status report, including a pretrial schedule to the extent then agreed, and identification of any issues still unresolved, by Monday, December 14, 2020. Should discovery disputes or other issues arise before then that require the Court's guidance, the parties will follow the Court's Rules to seek a prompt resolution.

Finally, while the parties are prepared to proceed with the scheduled October 22, 2020 conference if the Court would like to hear from them, they do not have any issues requiring the Court's guidance at this time.

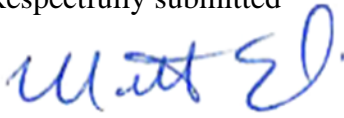
We thank the Court for its consideration and hope that all Court personnel are safe and well.

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